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Paper No. 9

In re Application of :  
Howard S. Ducotey, Jr. *et al* : DECISION ON PETITION  
Application No. 09/935,896 :  
Filed: August 23, 2001 :  
Attorney Docket No. EH-10485 :

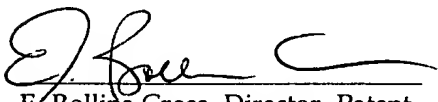
This is a decision on the petition filed by facsimile transmission on November 5, 2003 by which petitioners request withdrawal of the examiner's holding that this application stands abandoned for failure to file a proper and timely reply to the Office action dated February 11, 2003. The petition is considered pursuant to 37 CFR 1.8(b) and 37 CFR 1.181, and no fee is required.

The petition is granted.

Petitioners allege that the application is not abandoned because a timely and proper reply to the Office letter in question was in fact filed. In support of this allegation, petitioners have furnished a copy of the reply. The reply has affixed thereto a 37 CFR 1.8(a) certificate of transmission dated February 20, 2003, a date within the period of time for filing a reply as set in the Office action dated February 11, 2003. In accordance with 37 CFR 1.8(b), the reply bearing the 37 CFR 1.8(a) certificate establishes that a timely response to the outstanding Office action was in fact filed. Therefore, it is clear that this application is not abandoned.

Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the examiner for action on the reply filed on February 20, 2003.

PETITION GRANTED.

  
E. Rollins-Cross, Director, Patent  
Examining Groups 3710 and 3720

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